

Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Docket No. 01-12257-PBS

CITIZENS FOR CONSUME, et al .
Plaintiffs .

v. .

BOSTON, MASSACHUSETTS
MAY 9, 2006

ABBOTT LABORATORIES, et al .
Defendants .
.....

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 did have those conversations, but I'm speaking about me. I
2 did not have those conversations.

3 THE COURT: Well, when you come here, you're expected
4 to know that.

5 MR. SCHELUMNECK: Well if, again, if I may, if
6 nothing else for the record state why we can't understand why
7 they need this data. Oxford is a small regional health
8 insurer. Its business is concentrated in Connecticut, New York
9 and New Jersey. It has less than 4,000 members in
10 Massachusetts, less than 4,000. Mr. Mangi keeps talking about
11 a pending summary judgment motion in July. My understanding is
12 that is dealing with a class and it's confined to
13 Massachusetts. Why, why are we in a rush to demand this
14 production from Oxford if we can work out an arrangement? Also
15 Blue Cross and Blue Shield was, as you know, they were admitted
16 as a class representative in this case. Your Honor granted
17 protective orders on behalf of Tufts Associated Health Plan,
18 Neighborhood Health Plan and Fallon Community Health Plan and
19 in doing so said that Blue Cross' presence in the case changes
20 things. And we think it changes things for Oxford too, a
21 company who has less than 4,000 members in Massachusetts.

22 THE COURT: The motion is allowed. It's too little,
23 too late. I'm sorry. All right. Moving on the 2331.

24 MR. COCO: Speaking of Blue Cross Blue Shield, this
25 is Stephen Coco, from Roberts, Kaplan, Miller and Tracy

1 representing Blue Cross Blue Shield of Massachusetts.

2 THE COURT: Thank you.

3 MR. MANGI: Your Honor, on this motion, this is not
4 the first time I've been here arguing a Motion to Compel
5 against BCBS of Massachusetts. In the fall of last year, we
6 had a Motion to Compel against them as a third party. At that
7 time, BCBS came before Your Honor and said well the defendants
8 should seek the discovery they want from the named plaintiffs,
9 not from us. Well now BCBS of Massachusetts is a named
10 plaintiff and the discovery we're seeking from them pursuant to
11 this motion are documents falling into five categories. I'll
12 address them one by one if that would meet with Your Honor's
13 approval.

14 THE COURT: We'll do them, I'll hear from you on each
15 section and then we'll go back and forth and I'll make the
16 rulings as I go.

17 MR. COCO: Thank you, Your Honor.

18 THE COURT: All right.

19 MR. MANGI: Thank you, Your Honor. Now the first
20 category of documents are not only the most important category
21 of documents in this motion, but perhaps the most important
22 category of documents sought through discovery from BCBS in
23 this case, these are documents pertaining to Blue Cross Blue
24 Shield of Massachusetts staff model HMO, which we know was in
25 existence from sometime in the 80's through up until about

1 1997. Now the plaintiffs' entire theory of liability in
2 this case turns on the views advanced by their expert, Dr.
3 Hartman. Dr. Hartman says that payers such as BCBS expected
4 there to be a relationship between the process at which drugs
5 were available in the market and their AWP's of 30 percent or
6 less. If the differential was greater, in other words, if
7 prices were lower than he says they expected, Dr. Hartman says
8 there's fraud, and damages should accrue. Well, the presence
9 of a staff model HMO fundamentally has a potential to undermine
10 that theory. And the reason is, when a health insurer has a
11 staff model HMO, that means it owns pharmacies, it owns
12 physician clinics, and the health insurer itself is then
13 purchasing drugs. So it's not just reimbursing as in other
14 situations, it's actually a drug purchaser, which means it has
15 first hand knowledge of the prices at which drugs are available
16 in the market. If in fact those prices, prices at which it
17 purchased drugs, are below what Dr. Hartman says the market
18 expected, plaintiffs' theory has taken a fundamental, indeed a
19 crippling blow. Judge Saris recognized this exact point. A
20 critical part of her ruling denied class certification as to
21 self-administered drugs, was her finding that health plans had
22 purchased those drugs. She said in her August 16, 2005 order
23 in deciding that she would perceive in certifying a physician-
24 administered class, but there's no evidence that third party
25 pairs purchased physician-administered drugs, or know of the

1 mega spreads that exists for those drugs. Now we submit
2 that it's precisely this type of evidence, the staff model HMO
3 evidence that will prove that point and establish these issues.
4 Well, that's the relevance in why we need these documents.
5 What's BCBS' response? Well, BCBS--

6 THE COURT: Well, let's go right to the categories.

7 MR. MANGI: Certainly, Your Honor. This is the first
8 category--

9 THE COURT: All right.

10 MR. MANGI: --of document, which are staff model HMO
11 documents.

12 THE COURT: Okay.

13 MR. MANGI: They're requests 9 and 17. And the only
14 response from BCBS has been that well we have an index, this is
15 the index here, and you should choose what you want and then
16 we'll consider it. The problem is this index is vague to the
17 point of being useless. The descriptions we have are things
18 like HMOB microfiche, 18 out of 67 and other meaningless
19 acronyms or numbers. The only way to know what's responsive,
20 what's in these documents is for BCBS to go through them, or to
21 make them available. Now the law is crystal clear on what
22 happens on when there is an inadequate index, or inadequate
23 record keeping. We've cited, reported in our papers, the
24 *Koslowski (ph)* case, and the--

25 THE COURT: Well, have you--

1 MR. MANGI: --and the *Riddell (ph)* case.

2 THE COURT: --sat down with him and said these are
3 the things that we can't understand? These are the things that
4 need better definition?

5 MR. MANGI: Your Honor, we have had a conversation
6 with BCBS about this index, but they've conceded to us, and
7 indeed it's the reason for their posture here today, that they
8 agree from this index, one can't tell what's responsive.
9 Someone would have to go through these boxes to find the
10 relevant and responsive documents. So we're in a situation
11 where because of their inadequate index, someone does have to
12 go through these documents to find what's responsive.

13 THE COURT: And what are we talking about in volume?

14 MR. MANGI: BCBS has represented to us that they're
15 approximately 2,000 boxes of documents. However, we would
16 submit, Your Honor, that that issue, and the burden that's
17 associated with that review must be considered in the context
18 of this case. This is perhaps the largest pricing and
19 reimbursement litigation in the country, and defendants when
20 they were asked to produce documents to plaintiffs, had to take
21 account of that fact. Shering, for example, one of the Track 1
22 defendants, had to bring on an army of 60 lawyers just to
23 review documents. J&J had to bring in 36 lawyers for a more
24 extended period of time. DMS spent over five million dollars
25 on that similar process, and we would submit that given the

1 case law on indexing in this Court, BCBS as party that has
2 chosen to come to this litigation as a plaintiff, voluntarily,
3 has an obligation to assume and invest at least the same level
4 of resources as those that plaintiffs demanded of defendants
5 when we were making our productions. If they invest indeed a
6 fraction of the same resources, these documents can be
7 reviewed. I'm confident that when these boxes are cracked
8 open, it'll soon become apparent what's relevant and what's
9 not, and the documents can be produced quickly.

10 One final point, Your Honor, on the staff model HMO
11 documents. We've also asked for deposition testimony to see if
12 there is some way to get around this, to get the testimony we
13 seek. BCBS has represented to us that though it's been months,
14 they're unable to find anyone who can testify knowledgeably on
15 these topics. So these documents it appears represent the only
16 way we have of getting to these documents about drug purchases,
17 which are at the core of plaintiffs' case.

18 THE COURT: Well, Mr. Coco, is there a reasonable
19 approach to this?

20 MR. COCO: I believe there is, Your Honor. First,
21 with respect to Mr. Mangi's comments concerning the deposition,
22 it's not been briefed. There are a number of issues dealing
23 with the outstanding 30(b)(6) topics. And his representation
24 as to what we have told him about our searches are inaccurate.
25 We continue to look. We're having difficulty because the

1 people who are involved are former employees. We have been
2 trying to contact one individual who we think may have the
3 information, for the past two, two and a half weeks. He has a,
4 a night job, unavailable during the day. It's difficult to
5 even get him on the phone. We're looking. And, but that's a
6 separate issue. Your Honor, relying on Mr. DeMarco again, they
7 looked through 120 boxes. It took them three days. We've got
8 2,000, 15 times the number, would be 45 days. If you have to
9 go through and search the substance of the documents, there is
10 a practical solution. I agree with Mr. Mangi, if you just were
11 opening the boxes and are saying okay, does this box contain
12 contracts between the staff model HMO and the defendants
13 related to drugs? Relatively easy to identify. Does the box
14 contain data about drug pricing, drug purchasing? Relatively
15 easy to determine. Once you decide that a box has that
16 information, then you take the box and you look through it in
17 more detail and make sure that you know there isn't anything
18 else that--

19 THE COURT: What's wrong--

20 MR. COCO: --might be responsive.

21 THE COURT: --with that approach?

22 MR. COCO: Then the problem, just to finish, the
23 problem that we have had is that, I have to agree with counsel
24 for Oxford, which is every time you make a suggestion or try to
25 make a suggestion, there is no assurance given that okay, once

1 you do that, that's it. And I understand Mr. Mangi doesn't
2 want to have that position in front of the Court here. The
3 problem we're having and we'll have this with a number of the
4 topics here is the reason you need to draw a line, the reason
5 we end up coming in front of the Court on a Motion to Compel is
6 because you make a proposal and you're never assured okay, once
7 we do that that's it. And the example here is we've had 13
8 individual Blue Cross Blue Shield witnesses deposed. In
9 response to those depositions, I now have 38 individual
10 requests in three separate letters asking for follow up. And
11 so, you know, I don't want to create the misimpression that
12 we're trying to, you know, be obstructive on discovery here.
13 We're, we're not. We are trying to help and be cooperative and
14 work out compromises, but at some point you have to draw a
15 line. You know, in looking at this issue, you know, we're
16 willing to, to--

17 THE COURT: What do--

18 MR. COCO: --go to the effort.

19 THE COURT: --you propose?

20 MR. COCO: If I can go to the storage site where
21 these 2,000 boxes and look for drug contracts and drug pricing
22 data, that, I think is a doable task.

23 THE COURT: Why isn't that acceptable?

24 MR. MANGI: Your Honor, that's close to being
25 acceptable, although we seek a couple of additional categories

1 of documents in our requests.

2 THE COURT: Okay, Mr. Coco, listen to what else he
3 wants here.

4 MR. MANGI: Certainly in terms of request number 17,
5 what we're seeking are transaction records for contracts
6 pertaining to drug purchases. In relation to request number 9,
7 we're also seeking documents that show the organizational
8 structure, organizational charts for example--

9 THE COURT: Well, that's not tough, Mr. Coco, to--

10 MR. COCO: That--

11 THE COURT: --include.

12 MR. COCO: --that's fine

13 MR. MANGI: And additionally, Your Honor, there's
14 been testimony from BCBS witnesses that in addition to serving
15 BCBS members, the staff model HMO was also serving cash paying
16 patients and patients from other health plans. So we seek the
17 fee schedules that those witnesses reference or other documents
18 showing how BCBS, the staff model HMO billed those cash paying
19 patients or those other health plans for physician-administered
20 drugs. In short, Your Honor, what we're seeking here is--

21 THE COURT: Is that doable, Mr. Coco?

22 MR. COCO: I don't, I don't see how it could be, Your
23 Honor.

24 THE COURT: Okay.

25 MR. COCO: I--

1 THE COURT: That's a tougher one.

2 MR. COCO: --I apologize. I just, the billing, my
3 understanding is that there would be no way to segregate, that
4 you're going to find just massive, from what I've seen in the
5 boxes, you just have massive tapes--

6 THE COURT: Okay. I'm going to allow it as to the
7 categories that Blue Cross Blue Shield has agreed to up to that
8 last one at this time.

9 MR. MANGI: Thank you, Your Honor. I'll then move
10 onto the second category of documents, which are final signed
11 contracts. These are pursuant to request number 2 in the
12 subpoena that's at issue. Now so far, Your Honor, what we have
13 from BCBS of Massachusetts are templates, boilerplate blank
14 contracts as well as a handful of actual contracts which are
15 either from another litigation file or had been produced ad hoc
16 as they've come up in the course of depositions and have been
17 the subject of testimony. What we're seeking through this
18 motion is a comprehensive production of their contracts, given
19 that here they're a named plaintiff and not a third party.
20 That comprehensive production is necessary for the following
21 reasons; first, this is a class that BCBS purports to represent
22 that is defined expressly in terms of contracts. The class
23 definition refers to pairs that made reimbursement based on
24 contracts expressly using AWP as a pricing standard. Now from
25 BCBS witnesses, we've had testimony about BCBS using a variety

1 of different reimbursement methodologies in their contracts.
2 Not only has there been fee for service based on AWP, there's
3 been fee for service based on usual and customary charges.
4 There's been capitation contracts, risk sharing contracts,
5 withhold arrangements. Indeed, one BCBS witness testified that
6 prior to 1995, they didn't even use AWP. Now, how do we get to
7 the bottom of all this conflicting and contrasting testimony to
8 get a clear understanding as to whether or not BCBS can
9 represent the class it purports to represent. That's only to
10 look at the class definition and then to analyze their actual
11 contracts to see to what extent they've used AWP, when they've
12 used it, and to what extent they satisfied the class
13 definition. Now, not only are these documents needed for that
14 class purpose, they're also needed on the merits. A critical
15 issue in this case is to what extent payers such as BCBS have
16 available to them alternatives to AWP, to what extent they've
17 chosen to employee AWP with full knowledge of what it is and it
18 isn't because they derived benefits from doing so. I mean, the
19 case of BCBS of Massachusetts, this is especially important.
20 We know through discovery that in 2004 after assessing all of
21 the issues drawn in AWP allegations about inflation and
22 overcharges, they chose to continue with it instead of moving
23 to ASB, because they were concerned about providing the
24 actions, of shift in the site of care to hospitals, and other
25 business reasons. Now these contracts will show us going back

1 in time to what extent they've had different methodologies
2 available to them, to what extent they've employed them, and
3 will enable the type of statistical analysis that could
4 fundamentally undermine their claim as plaintiffs in this case.

5 Now in terms of the burden that they've claimed in
6 their papers, there's no practical alternative here, Your
7 Honor. We can't get a statistically significant sample, or
8 indeed a sample that shows every type of contract without going
9 through all of them. And what we're asking BCBS to do here
10 again is no different from what the plaintiffs ask defendants
11 to do. My own client, Johnson & Johnson, was told by
12 plaintiffs, indeed they insisted on it, that we produce copies
13 of all of our final signed contracts, be they with providers,
14 with PBN's, with managed care, and indeed, I myself had the
15 pleasure of spending days in the contracting room collecting
16 these and producing them. What we're seeking is no different
17 than from what they sought from us. It's essential given the
18 cost definition. There's no burden. This is not a privilege
19 review; it's a copy job. And we ask that these documents be
20 produced.

21 THE COURT: What about contracts, Mr. Coco?

22 MR. COCO: I, have, have to chuckle when he says it's
23 no burden, it's just a copy job.

24 THE COURT: Oh, well.

25 MR. COCO: Your Honor, again, this is one of those

1 categories where you really have to take a look at the
2 balancing of the burden versus what they already have and what
3 they really need to get. Mr. Mangi makes a number of points
4 about the importance of understanding what methodology the
5 various providers were reimbursed at, and says that--

6 THE COURT: The contracts are pretty basic to the
7 issues, so--

8 MR. COCO: Well the, but the thing is, Your Honor,
9 that information is already in the claims statement that's been
10 provided to them. All you need to do in order determine
11 whether a provider has been reimbursed on a particular
12 methodology is look at the claims data. It tells you that.
13 And so there's no, there's then no need to go to a contract,
14 80-90% of which are form contracts anyway, to verify that if
15 you have a certain, I mean, let me back up. We have provided,
16 Blue Cross Blue Shield has provided claims data for all the
17 drugs that were physician-administered drug claims that were
18 submitted. By looking at that data and looking at what was
19 reimbursed for a particular drug, and it can be sorted by
20 provider so you know how much a particular provided in claims
21 for any given time period that you like, you can determine,
22 okay what was that provider reimbursed for that drug. And if
23 you know what the AWP is, then your comparison will tell you
24 okay, was this provider being reimbursed based on AWP? They
25 don't want to do that work. But they want--

1 THE COURT: They're entitled to the contracts.

2 Contracts to be produced. No.

3 MR. COCO: Then I--

4 THE COURT: No, I think--

5 MR. COCO: --then I would request that the cost of
6 doing so be shifted to what we were talking about and, and so
7 we're clear, every contract, or just the ones for drugs in this
8 case?

9 THE COURT: Well, can you narrow it?

10 MR. COCO: It's in the claims data by provider
11 number.

12 THE COURT: Can you narrow--

13 MR. MANGI: Your Honor.

14 THE COURT: What you're looking for?

15 MR. MANGI: Your Honor, it's our understanding that
16 going through millions of individual claims and claims data to
17 parse out individual contracts is not feasible.

18 THE COURT: Yes, I agree. I agree. That's why I've
19 ordered the contracts produced, but I'm asking you if you can
20 narrow it.

21 MR. MANGI: Your Honor, I'm aware of no way and we've
22 tried this with dozens of individual health plans to come up
23 with some sort of a sampling methodology that would work.
24 We've tried it time and again. It simply doesn't work.

25 THE COURT: All right. Contracts to be produced. Do

1 you have an idea, Mr. Coco?

2 MR. COCO: Other than when you say their, their
3 request is for all provider contracts. Your Honor, my
4 understanding is you are going to require us to produce
5 provider contracts for providers who actually submitted claims
6 for these drugs?

7 THE COURT: Well, I'm, that's why I'm asking,
8 Mr. Mangi, if there's a way of narrowing it a little bit.

9 MR. COCO: Well, that still leaves you--

10 THE COURT: Yes.

11 MR. COCO: --close to 2,000 provider contracts. We
12 provided them with three of them that were two boxes.

13 MR. MANGI: Your Honor--

14 MR. COCO: Now if you want, if you want us to require
15 us to give another, you know, 2,000 contracts, yes, some of
16 them, yes, are going to be very, you know, a page. The other
17 scope of the request is they've said, they've asked for
18 contracts and all attachments. In order to do that process,
19 this is not a question of okay, you have the, all the contracts
20 are stored some, in some location--

21 THE COURT: And what are the attachments? Tell me
22 what sort of things are, would be found in the attachments?

23 MR. COCO: It could be anything, Your Honor. It
24 could be, they could have attached a fee schedule. They
25 could've attached additional addendums that the physicians

1 signed. They could attach, a lot of these physicians are
2 part of practice groups and their individual contract may be
3 appended to a practice group contract, or the practice group
4 contract may be appended to the physician contract. That's why
5 we took the position of, you know, we understand that they have
6 had with difficulties with sampling in the past. We understand
7 that.

8 THE COURT: Do you need the attachments?

9 MR. MANGI: Your Honor, absolutely. The class is
10 defined in terms of contracts that expressly use AWP as a
11 pricing standard. Whether or not it does so is referenced in
12 the attachment in many cases.

13 THE COURT: So we're talking about 2,000 or so
14 contracts?

15 MR. MANGI: Your Honor--

16 MR. COCO: I'm sorry.

17 THE COURT: Is that about--

18 MR. COCO: We, what we did is we sorted the claims
19 data we provided. I believe the number that we came up with
20 was 1950--

21 THE COURT: All right.

22 MR. COCO: --1947.

23 THE COURT: Contracts to be produced with
24 attachments.

25 MR. COCO: Your Honor, then I just, when you write

1 your order, I do not know how quickly or expeditiously that
2 can be provided.

3 THE COURT: Well, I'm not going to, give me a
4 timeframe that's, what you think is--

5 MR. COCO: I have--

6 THE COURT: Okay, you'll start--

7 MR. COCO: --months--

8 THE COURT: --you'll confer with--

9 MR. COCO: --months.

10 THE COURT: You'll confer with your colleagues. It
11 certainly can be a rolling production.

12 MR. MANGI: Your Honor, we would ask that the class
13 schedule be considered in terms of summary judgment briefs, and
14 to the extent full production is not feasible, we would ask for
15 a rolling production--

16 THE COURT: Rolling production.

17 MR. MANGI: --as much as possible up front. And
18 additionally, Your Honor, given that Mr. Coco has represented
19 that he seeks to narrow the production to providers that
20 submitted claims for drugs, we would ask that those, the
21 contracts provided also include providers whose contracts
22 included drugs within another framework, such as capitation or
23 risk sharing. It, in other words, if Mr. Coco--

24 THE COURT: No, I'm not going to go that far at this
25 time.

1 MR. COCO: I'm not even sure what he's asking.

2 MR. MANGI: Well, I'm, I'm happy to clarify it for
3 you.

4 THE COURT: No, next category.

5 MR. MANGI: Fair enough. Your Honor, the third
6 category of documents relate to provider negotiations, in other
7 words, the back and forth between physicians and BCBS of
8 Massachusetts. The critical issue in this case is knowledge,
9 who knew what about AWP, when did they know it. When did they
10 know about AWP's relationship to drug acquisition, what they
11 did know about the extent of which servicing fees incident or
12 drug administration covered costs, to what extent is their
13 cross subsidization of drug reimbursement covering inadequate
14 servicing fees, and so on. Now, the place where we would
15 expect to find all the correspondents and communications about
16 this is in the back and forth between providers and between
17 BCBS. We've asked for the production of those files, which are
18 provider negotiations and communications and BCBS has said, it
19 will be burdensome to produce them. But again, those are
20 communications about the issues that go to the hearts of this
21 case. We asked that they be produced.

22 THE COURT: Denied. Too burdensome. Next category.

23 MR. MANGI: Well, Your Honor, the fourth category of
24 documents are very discrete in terms of what we're seeking.
25 They're two categories of documents. The first are the

1 documents relating to BCBS's own financial analysis of the
2 amount it stands on drug reimbursement and, secondly, analysis
3 relating to the manner in which drug reimbursements are
4 factored into the setting of premiums. And that second
5 category we've said we'll accept in the first instance just the
6 top-level analysis giving a basic understanding of how that's
7 done. These two categories are important because of the theory
8 plaintiffs' expert has put forward. Plaintiffs refer to this
9 as the importance of being unimportant. They represent that
10 health plans such as BCBS don't pay much attention to what they
11 reimburse for physician-administered drugs because it's not
12 important compared to what they spent on other areas. Well,
13 what we're saying is well, if you're saying it's not important,
14 that it's not a significant amount of money, give us, number
15 one, the financial analysis of how much you do spend on these
16 drugs and number two, give us analysis showing how your drug
17 spend, not just physician-, if you have just physician-
18 administered drugs, that's great. If you haven't broken it
19 out, your entire drug spend, how do you use that in determining
20 premium setting. If it's not important, then show us the
21 documents showing it's not important.

22 THE COURT: Mr. Coco, this sounds like a little
23 vaguer--

24 MR. COCO: Well here, here's the problem.

25 THE COURT: --request to me.

1 MR. COCO: The first problem. I'll break the
2 categories down. Here's the request; documents sufficient to
3 show your expenditures on physician-administered drugs on a
4 quarterly basis since 1991. You take the claims data we've
5 provided, you separate it into quarters and that gives you the
6 expenditures on physician-administered drugs on a quarterly
7 basis. If they're looking for something more detailed than
8 that, we're not aware of any other documents that we produce
9 about physician-administered drugs and expenditures for them.
10 It's just the reimbursement data, which they already have. The
11 second request is documents reflecting analysis performed by
12 you in setting premiums. I'll leave off the last part.
13 Documents reflecting analysis performed by you in setting
14 premiums. That's everything. Now, they're coming to us and
15 saying well, we're just talking about the, the drug portion of
16 it. If the question is what is the relevant, how, is, how
17 important are physician-administered drugs, then what relation
18 does that have to premium setting? It might have some relation
19 to how big is the drug reimbursement versus your overall
20 reimbursement? It doesn't have anything necessarily to do with
21 premium setting. Nevertheless, we were able to locate an
22 analysis of, that was done for some of the, you know,
23 physician-administered drug J-code drugs, we'll turn it over,
24 but we don't, the drug portion of it is simply not factored in
25 the way that they would like it to be in order for us to

1 produce documents. We don't have that. I can, yes,
2 personally I'm not aware of specifically what the for example
3 yearly quarterly financial reports are that are prepared for
4 Blue Cross Blue Shield. If this issue is, what's the drug
5 reimbursement expense versus total reimbursement expenses for
6 the company, that's something I'd be willing to go back and say
7 okay, that's, we'll take a look for that so you can see what
8 percentage you have the physician-administered drugs and
9 services that we, that you've got the claims data for--

10 THE COURT: All right. I'll allow it that degree,
11 then if you're not satisfied, you can come back.

12 MR. MANGI: Your Honor, but I'll seek clarification
13 as to the, there are two separate requests that are at issue
14 here. The first request sought financial analysis showing how
15 much BCBS spends on reimbursing
16 physician-administered drugs. On that request, Mr. Coco said
17 we should just look at the claims data. But of course claims
18 data doesn't show BCBS' own analysis which is how you rebut
19 their claim of the importance of being unimportant.

20 THE COURT: The first part of the request is denied.
21 I'll allow the second part to the extent that Mr. Coco has
22 indicated he thinks he can produce it. If when you receive
23 that data you're not satisfied, you can come back in and renew
24 the motion.

25 MR. MANGI: Thank you, Your Honor. That brings us to

1 the fifth and final category, which are documents around,
2 from the public sources available to us, the Department of
3 Justice website. We've been able to ascertain that in 1994
4 there was a government investigation and a False Claims Act
5 against BCBS of Massachusetts. As a result of that, BCBS
6 agreed to pay \$2.75 million to the government to settle
7 allegations that they had submitted false Medicare reports in
8 processing Medicare claims. Now we've tried through discovery,
9 through depositions, to get a better understanding as to what
10 was involved in this case. Witnesses we've had have not been
11 knowledgeable about the details of this case. It appears
12 certainly from the public record that this case is likely
13 relevant in a couple of ways. First of all, this, in this
14 case, plaintiffs' damages claims--

15 THE COURT: Was an action actually filed, or was
16 there a settlement prior to--

17 MR. MANGI: Your Honor, it's our understanding that
18 an action was filed.

19 THE COURT: Well, it's your understanding. I mean,
20 have you just looked on the docket?

21 MR. MANGI: Your Honor, from the, well from the
22 Department of Justice's press release, it seems quite clear
23 that there was a case, a False Claims Act, which was then
24 eventually settled.

25 THE COURT: That assumes you believe everything the

1 Department of Justice says.

2 MR. MANGI: Well, Your Honor, we've also had
3 communications--

4 MR. COCO: Of course we do.

5 MR. MANGI: We've also had conversations with
6 Mr. Coco about this topic, because we're seeking their
7 documents produced in the course of that case's, that
8 investigation. The reason why we contend that these are
9 relevant or potentially relevant, Your Honor, are for a couple
10 of reasons. First, plaintiffs' claims hear--

11 THE COURT: This was a civil matter?

12 MR. MANGI: Our, my understanding is it was a False
13 Claims Act, Your Honor, is that the claims plaintiffs are
14 making in terms of their damage amounts are based on claims
15 data. And we would like to probe this case to get an
16 understanding of the extent to which this alleged inflation or
17 misrepresentation of claims in their claims systems infected
18 beyond merely these Medicare claims and was a problem and
19 damage to their claims system as a whole, which could impact
20 this case here. Additionally, from the same press release, we
21 have an understanding that they implemented in the settlement
22 certain monitoring systems, which again could be relevant here.
23 For example, they're monitoring physicians and physician
24 claims. To what extent did that monitoring give them knowledge
25 of physicians' acquisition cost for drugs and other matters may

1 be germane to this litigation. What we're seeking here
2 consistent with the broad scope of discovery are documents
3 relevant to that case so we can fully assess its relevance, or
4 its potential relevance to this litigation.

5 THE COURT: Mr. Coco, do you know about this
6 litigation.

7 MR. COCO: I do, Your Honor, and--

8 THE COURT: Was it a civil case?

9 MR. COCO: That's, that's implored.

10 THE COURT: This was a civil case?

11 MR. COCO: You know, I'm not sure that a case was
12 filed. There was an investigation.

13 THE COURT: Okay, that's, I mean that's significant
14 to me.

15 MR. COCO: It's, I'm not sure that there was
16 litigation filed. There was a, the reason I hesitate is a lot
17 of times what will happen I know and for example in the FDC
18 context and the justice context, something will be officially
19 filed at the same time you file a settlement.

20 THE COURT: Exactly.

21 MR. COCO: I don't want, I don't want to represent
22 that I know one way or another whether that happened in this
23 case in terms of the settlement. Your Honor, they deposed an
24 individual, Vincent Floor, who was involved in the government's
25 inquiry into this. They had him in the deposition. They asked

1 him questions. What was this investigation about? Blue
2 Cross Blue Shield was the Medicare Part B carrier for
3 Massachusetts in the tri-state area. In order to obtain
4 reimbursement, they're required to file quarterly and yearly
5 reports disclosing how many claims have you processed? How
6 many resolutions have you reached? What's the timeliness of
7 it? Whether, how much have you followed up on, on recovering
8 overpayments? It's a reporting process that is then used to
9 determine--

10 THE COURT: Would--

11 MR. COCO: --how much money Blue Cross Blue Shield
12 gets back.

13 THE COURT: I don't mean to interrupt you--

14 MR. COCO: Sure.

15 THE COURT: --but they're looking for whatever they
16 think was produced in discovery. It's not clear to me that you
17 even know whether or not anything was produced in discovery in
18 this case.

19 MR. COCO: There was.

20 THE COURT: There was.

21 MR. COCO: There, be, you're saying discovery.

22 Where, as part of the investigation--

23 THE COURT: As part--

24 MR. COCO: --did in fact--

25 THE COURT: --that that they turned over.

1 MR. COCO: --that they turned over documentation,
2 yes they did, Your Honor.

3 THE COURT: And do you know, I mean it, what, what's
4 the volume of what they turned over?

5 MR. COCO: That I do not know. But, Your Honor, it
6 has no relevance to this case. It's about reporting. Blue
7 Cross Blue Shield was required to submit quarterly reports that
8 say in this time period, we processed this number of claims.
9 It doesn't get into the merits of the claims. It doesn't get
10 into AWP. It doesn't get into the amount of reimbursement.
11 It's how many claims did we process.

12 THE COURT: What's the relevance, Mr. Mangi, to AWP?

13 MR. MANGI: Your Honor, first of all to answer your
14 question, a lawsuit was filed. I have here the Department of
15 Justice's press release, which states that the lawsuit was
16 filed and just recorded in Boston in 1993. The settlement was
17 in 1994. As to the potential relevance of these documents,
18 well, Your Honor, we're talking here about issues in the claims
19 system. We can only ascertain in an evidentiary format the
20 manner to which, the extent to which those claims processing
21 problems infected the larger claims processing system if we get
22 an understanding of what the issues were. Moreover, the
23 settlement of those allegations involved the implementation of
24 monitoring systems. If we have an opportunity to review both
25 the documents, settlement agreement, we get a sense of what

1 those issues were.

2 THE COURT: Are you going to provide the settlement
3 agreement?

4 MR. COCO: Well, we're not willing to produce
5 anything, Your Honor. This, this is truly, that's, that's--

6 THE COURT: Was the settlement agreement sealed?

7 MR. COCO: Um--

8 THE COURT: You know, the first thing to do,
9 Mr. Mangi, is to go to the docket. Denied at this time without
10 prejudice to be renewed after further investigation by
11 defendant.

12 MR. MANGI: Thank you, Your Honor.

13 THE COURT: All right, so in sum, the motion is
14 allowed in part and denied in part according to the oral
15 rulings made from the bench.

16 All right, moving on to 2374, defendant Bristol
17 Myers.

18 MR. COCO: Thank you, Your Honor.

19 THE COURT: You're welcome. I'll get back to you,
20 Mr. DeMarco. I don't know, the body language says you are on
21 one side of the courtroom and your opponent is on the other.
22 That's not good.

23 MR. DeMARCO: It's not a good sign.

24 MR. DWYER: Thomas Dwyer, one of the two Boston
25 people here this morning, for Bristol Myers.

Exhibit 4

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Stephen L. Coco
(617) 859-2731

June 30, 2006

Via Facsimile and Overnight Mail

Adeel A. Mangi, Esq.
Patterson Belknap Webb & Tyler, LLP
1133 Avenue of the Americas
New York, NY 10036

Re: *In Re Pharmaceutical Industry Average Wholesale Price Litigation*,
MDL No. 1456, Civil Action No. 01-12257-PBS
Our File No.: 072188-0000

Dear Adeel:

I am writing to provide you with an update on BCBSMA's discovery efforts.

I. Provider Contracts

As we have previously informed you, attempting to identify, locate and copy provider contracts is a time consuming and burdensome process. BCBSMA hopes to have the next batch of contracts ready to produce next week.

II. Staff Model HMO documents

We had identified roughly 1800 boxes of documents that potentially contained documents related to the staff model HMO. We have done an initial review of all but roughly 120 boxes and are completing our initial review of the remaining boxes today. In our initial review, we have identified only a very small percentage of documents that might even be considered responsive. For example, we have identified a few "organizational" charts and no contracts for physician administered drugs with drug companies. There are some documents that appear to contain some information concerning drug costs. I am sending you the first box by overnight mail (BCBSMA-AWP-29648 - BCBSMA-AWP-33063). We will continue to review the remaining materials to determine whether they contain any additional responsive documents and hope to produce any remaining documents next week or early in the week of July 10th.

We have also used the documents to attempt to identify individuals who may have information concerning the acquisition of physician administered drugs. For example, we have

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Adeel A. Mangi, Esq.

Page 2

June 30, 2006

spoken with Ed Curran, who is mentioned in some of the documents and whom you had previously identified, but he was involved with retail pharmacy drugs, not physician administered drugs. He did identify a couple of individuals who may possess information concerning physician administered drugs, but we have been unable to locate them to date (although we will continue our efforts).

III. Financial Information

There was a miscommunication between me and BCBSMA concerning the type of information we were going to produce, as I believe the Court's ruling limited our obligation to documents that would provide overall claims data, which the defendants could use to assess the amount of claims for physician administered drugs versus total claims. Accordingly, I am sending you by overnight mail a disc that has a number of BCBSMA annual reports which contain this information (BCBSMA-AWP-33064), and expect to supplement that shortly for as many years as BCBSMA has such reports.

IV. Claims Data

BCBSMA is close to finishing a response to the questions concerning the claims data, and expects to get the information to you next week.

Please contact me if you have any additional questions.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI, LLP



Stephen L. Coco

SLC

cc: Edward. Notargiacomo, Esq.

BN1 35032371.1

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ATTORNEYS AT LAW**FROM: Stephen L. Coco**

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DATE: August 18, 2006
TO: Adeel A. Mangi, Esq.
Patterson Belknap Webb & Tyler, LLP
FACSIMILE NO.: (212) 336-7947

TELEPHONE NO.:**FILE NO.:** 72188-0000**NUMBER OF PAGES INCLUDING COVER SHEET:** 4

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(617) 859-2731

August 18, 2006

Via Facsimile and Overnight Mail

Adeel A. Mangi, Esq.
Patterson Belknap Webb & Tyler, LLP
1133 Avenue of the Americas
New York, NY 10036

Re: *In Re Pharmaceutical Industry Average Wholesale Price Litigation*,
MDL No. 1456, Civil Action No. 01-12257-PBS
Our File No.: 072188-0000

Dear Adeel:

I am responding to the inquires raised in your July 21, 2006 letter. With respect to the document production issues, BCBSMA had previously inquired of the individuals who would be responsible for maintaining documents such as government reports whether BCBSMA possessed such materials. This included people in the "government affairs" area. We were informed that BCBSMA did not possess such materials. After receiving your letter, we reiterated that request and received the same response. Thus, BCBSMA has not located any government reports dealing with AWP.

BCBSMA has now produced all of the documents that it has been able to locate concerning the staff model HMO that are, arguably, within the categories the Court ordered BCBSMA to produce. No contracts were located.

In response to your inquiry, BCBSMA has once again reviewed its files for documents concerning Pipefitters. BCBSMA will be producing e-mails that Chris May was able to locate (none of which appear to be relevant to this litigation). Mr. King is no longer with the company and BCBSMA is not aware of having retained any of his e-mails. BCBSMA has not located additional documents, including the categories listed in your letter, related to Pipefitters.

I have enclosed BCBSMA's current privilege log. I have also enclosed two CDs and documents, bates numbered BCBSMA-AWP-42705- BCBSMA-AWP-42795, which contain additional provider contract materials. These materials have been designated "Highly Confidential."

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Adeel A. Mangi, Esq.

Page 2

August 18, 2006

With respect to depositions, BCBSMA is prepared to make Mike Mulrey available to testify solely with respect to the BC65 product. In the past, I have requested that you provide a specific description of the types of information you will be seeking. In general, you have responded with either descriptions which, because they are vague or overbroad, do not enable me to ensure that the witness will be prepared to discuss all of the topics which you may raise, or by referring me to the other questions asked of BCBSMA witnesses, which would require me to review dozens of transcripts to identify the questions. I request that you view my inquiries as they are intended – an effort to ensure that BCBSMA presents a witness that is educated to provide you with the information you are seeking. By taking a little bit of time on your end to identify specific, reasonable categories of information about the BC65 product into which you wish to inquire, we can work together to ensure that you are presented with a witness who can answer your questions. If you decline to do so, then we will proffer a witness, but it will be your responsibility if the witness is unable to answer some of your questions, and BCBSMA will not proffer an additional witness on this topic.

It is not clear to me what you mean in requesting that BCBSMA make someone available to testify concerning the recently produced documents. BCBSMA does not believe a keeper of the records type deposition is necessary or warranted. BCBSMA has located no witness who is knowledgeable concerning the contents of the documents. BCBSMA is continuing its efforts to locate witnesses with substantive knowledge of the staff model HMO issues, though it has essentially exhausted the avenues it believes it can pursue. At this point, we are collecting the names identified from the staff model HMO materials that were recently produced to determine if they include any additional individuals who may have knowledge concerning physician administered drug purchases, but we believe that it is unlikely. Once that review is complete, however, we will provide you with a detailed description of the efforts we have made and determine where to proceed from there.

With respect to your request for a corporate representative to discuss BCBSMA's Medigap supplemental insurance programs, we disagree that the topics identified in your letter are within the scope of the deposition topics in the subpoena served on BCBSMA. Furthermore, it is impossible to identify an individual who could respond to the topics identified in your letter, given that they are vague and overbroad. Solely as an effort at compromise, BCBSMA is willing to proffer a witness to discuss the Medigap supplemental insurance programs generally. Again, if there are specific, reasonable areas of inquiry which you would like the witness to be prepared to address, please identify them. Otherwise, if there are areas of inquiry which you could have identified and failed to, and the witness is unable to respond fully to those questions, BCBSMA will have no obligation to proffer an additional witness.

Finally, BCBSMA is still researching the claims data-related questions. I hope to have that information shortly, but did not want to delay providing you with the information in this letter.


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Adeel A. Mangi, Esq.
Page 3
August 18, 2006

BCBSMA has been patient and cooperative with the Defendants' discovery requests, including your seriatim requests for additional information and discovery, many of which are only arguably within the scope of the Defendants' discovery requests or not within those requests at all. We have also produced a significant number of witnesses for deposition and are prepared to proffer at least two (and perhaps three) more. BCBSMA views this as the end of the discovery process and, apart from providing the materials and witnesses discussed in this letter, and providing certain additional provider contracts, BCBSMA believes that its discovery obligations are complete.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRELLI, LLP


Stephen L. Coco

Enclosures

SLC

cc: Edward Notargiacomo, Esq.

ROBINS, KAPLAN, MILLER & CIRESI LLP

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Stephen L. Coco
(617) 859-2731

October 2, 2006

Via Facsimile and Overnight Mail

Adeel A. Mangi, Esq.
Patterson Belknap Webb & Tyler, LLP
1133 Avenue of the Americas
New York, NY 10036

Re: *In Re Pharmaceutical Industry Average Wholesale Price Litigation*,
MDL No. 1456, Civil Action No. 01-12257-PBS
Our File No.: 072188-0000

Dear Adeel:

I have enclosed e-mails which Chris May was able to locate concerning communications with Pipefitters, BCBSMA-AWP-42897 - BCBSMA-AWP-43311

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI, LLP


Stephen L. Coco

SLC

Enclosures

cc: Edward Notargiacomo, Esq.

BN1 35034487,1

Exhibit 5

Patterson Belknap Webb & Tyler LLP

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August 22, 2006

By Email Attachment

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aamangi@pbwt.com

Stephen Coco, Esq.
Robins, Kaplan, Miller & Ciresi L.L.P.
25th Floor
800 Boylston Street
Boston, MA 02199

Re: In re AWP Litigation

Dear Steve:

I am writing in response to your letter dated August 18, 2006 regarding discovery from your client Blue Cross Blue Shield of Massachusetts ("BCBSMA").

With regard to the Blue Care 65 ("BC65") product, please provide dates when Mr. Mulrey is available to be deposed. We have previously identified the specific issues regarding BC65 as to which we seek testimony, but are happy to do so again. Defendants seek testimony on issues including: the methodologies that have been used to reimburse physicians for drugs administered to patients covered by this product in-office and for services attendant to administration of such drugs; any actual or contemplated changes to those reimbursement methodologies, including all reasons why any such changes were made or why contemplated changes were not made, and any analysis associated with consideration of those issues; and the process whereby BCBSMA determines the appropriate premium to charge in relation to its BC65 product. BCBSMA witnesses have testified that the BC65 product is now known as the Medicare Advantage HMO. *See, e.g.,* O'Brien Tr. 90:10-11; 94:2-11. Thus, we also seek testimony in the areas listed above for the Medicare Advantage HMO product. These areas of testimony are directly relevant to causation and to BCBSMA's claim that that it has been damaged in relation to its BC65 and Medicare Advantage HMO products by defendants' conduct.

With regard to BCBSMA's Medigap product, please provide dates when the witness you reference will be available to testify. We have previously identified the specific areas as to which we seek testimony, but are happy to do so again. Defendants seek testimony on issues including: the range of Medigap products that BCBSMA offers and has offered over time; the analysis that BCBSMA undertakes and the factors it considers in determining whether or not to offer Medigap products; the analysis BCBSMA undertakes to measure the performance of such Medigap products; and the process whereby BCBSMA determines the appropriate premium to charge in relation to its Medigap products. Again, these areas of testimony are

Stephen Coco
August 22, 2006
Page 2

directly relevant to causation and to BCBSMA's claim that it has been damaged in relation to its Medigap products by defendants' conduct.

With regard to the recently-produced documents concerning BCBSMA's staff model HMO, defendants are not seeking a custodian of records. Rather, BCBSMA is obliged to produce a 30(b)(6) witness who has been educated regarding those documents. Defendants will wait to proceed with that deposition until your efforts to identify a witness with greater knowledge are complete and a detailed description of those efforts has been provided to us as per your letter.

As to documents regarding Pipefitters, you state that "Mr. King is no longer with the company and BCBSMA is not aware of having retained any of his emails." This response raises potential spoliation concerns. Please provide a more detailed explanation of when Mr. King left the company and why his emails, many of which are likely relevant to this ongoing litigation, were not retained.

Defendants disagree with other positions stated in your letter but will not detail the areas of disagreement here.

Please call if you have any questions.

Sincerely,



Adeel A. Mangi

cc: Ed Notargiacomo, Esq.
Counsel of Record

Exhibit 6

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September 29, 2006

Via Facsimile and Overnight Mail

Adeel A. Mangi, Esq.
Patterson Belknap Webb & Tyler, LLP
1133 Avenue of the Americas
New York, NY 10036

Re: *In Re Pharmaceutical Industry Average Wholesale Price Litigation*,
MDL No. 1456, Civil Action No. 01-12257-PBS
Our File No.: 072188-0000

Dear Adeel:

I have enclosed documents relating to pricing for Medigap and BC 65 products, BCBSMA-AWP-42832 - BCBSMA-AWP-42896, which may be relevant to the Rule 30(b)(6) depositions next week. Ken Arruda's title is Director, Senior and Individual Plans. Mr. Arruda also has some knowledge with respect to the BC65 product, and BCBSMA will designate him to respond to questions on that topic as well as the Medigap topic, so that the defendants can have the benefit of both his and Mr. Mulrey's knowledge with respect to the BC65 product.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI, LLP


Stephen L. Coco

SLC

Enclosures

cc: Edward Notargiacomo, Esq.

BN1 35034455.1

Exhibit 7

Mangi, Adeel A. (x2563)

From: Coco, Stephen L. [COCOSL@rkmc.com]
Sent: Tuesday, October 03, 2006 9:38 AM
To: Mangi, Adeel A. (x2563)
Cc: Harrington, James S.
Subject: Depositions Wednesday and Thursday

>>>> Please read the confidentiality statement below <<<<

Adeel,

I have attached three documents that the witnesses will rely on to assist their testimony during the depositions. The first two documents, bates numbered BCBSMA-AWP-43312-43316, were located by Mike Mulrey and are related to BC65. The third document, bates numbered BCBSMA-AWP-43317-43320, was prepared by Ken Arruda for purposes of this deposition. We have not produced any documents from Ken Arruda's personal files, as he is being offered in the capacity of a corporate designee, not as an individual. That said, Mr. Arruda reviewed the document requests and, apart from possessing copies of benefit plans (which BCBSMA has previously objected to producing), was not aware of any documents in his files that are responsive to the requests.

Ken Arruda's current responsibilities include both the Medigap and Medicare Advantage (BC65) products. Accordingly, in addition to testifying concerning the Medigap products, Mr. Arruda will be able to provide testimony concerning BC65 and its general operation. Mr. Arruda will also be the individual to respond to the questions concerning setting of premiums with respect to both Medigap and BC65. Mr. Mulrey will be able to provide information concerning the reimbursement methodologies for BC65, but will not be prepared to discuss the setting of premiums.

Please let me know who will be attending on behalf of the defendants so that I can put their names in the visitors log. It is our understanding that the depositions will start at 9:30. Let me know if this is incorrect.

Steve

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10/9/2006

Exhibit 8

Patterson Belknap Webb & Tyler LLP

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October 7, 2006

By Email Attachment

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25th Floor
800 Boylston Street
Boston, MA 02199

Re: In re AWP Litigation

Dear Steve:

I am writing to memorialize requests for the production of documents referenced during the October 4, 2006 deposition of Kenneth Arruda and to address the issue of questions Mr. Arruda was unable to answer.

Outstanding Document Production

It was apparent from Mr. Arruda's testimony that BCBSMA made a highly selective and inadequate production of documents readily available from its files. Please produce the following documents referenced during Mr. Arruda's deposition.

- The non-produced Actuarial Memoranda prepared in relation to all MediGap plans, including direct and group plans, and maintained in the files of BCBSMA (Tr. 129-132, 146).
- All schedules accompanying Actuarial Memoranda, including documents sufficient to determine the actual "gains" or "losses" BCBSMA realized on its MediGap plans. (Arruda Tr. 127-129).
- All OIG reports Mr. Arruda testified he reviewed. (Tr. 105-106).

Defendants require the immediate production of these documents to respond to BCBSMA allegations, particularly since Mr. Arruda could not respond to inquiries concerning performance of BCBSMA MediGap plans other than the Medex Gold referenced in the memoranda disclosed. Indeed, to comply with the disclosure requirements of the Court's pre-trial order, BCBMA must make the production before the close of business Monday. That should not be problematic because, as Mr. Arruda testified, the documents are readily available from BCBMA files.

Stephen Coco
October 7, 2006
Page 2

Deposition of Susan Pierce

Given that Mr. Arruda was produced as a Rule 30(b)(6) deponent, defendants expected that he would be the most knowledgeable person at BCBSMA on the noticed topics and would have been prepared to answer all responsive questions. In the course of the deposition, it became apparent that Mr. Arruda was unable to answer fundamental questions concerning the design and performance of the BCBMA MediGap plans. Instead, he identified Ms. Susan Pierce as the person most knowledgeable about these topics and as the person who would be able to answer the questions posed.

In these circumstances, we call for the immediate deposition of Ms. Pierce. For your reference, below are some of the questions Mr. Arruda was unable to answer and which he said Ms. Pierce would be able to answer. Also listed are some of the areas central to the Rule 30(b)(6) deposition as to which Ms. Arruda identified Ms. Pierce as the person with principal responsibility:

- Mr. Arruda did not know whether premiums received for MediGap plans were greater than the costs incurred in relation to those plans, but said Ms. Pierce would know the answer. (Tr. 45-46).
- Mr. Arruda did not know whether BCBSMA does any variance analysis to determine the extent to which its cost estimates used in premium setting were accurate, but said Ms. Pierce would know the answer. (Tr. 123-124)
- Mr. Arruda did not have an understanding as to why specific operating gains and losses in relation to MediGap plans occurred, but said Ms. Pierce would know the answer. (Tr. 149)
- Mr. Arruda did not know whether premiums in relation to BC 65 were designed to cover only the cost of providing enhanced services over those available through traditional Medicare or whether they were designed to generate an amount in addition to cost, but said Ms. Pierce would know the answer. (Tr. 160-161)
- Mr. Arruda said Ms. Pierce was the person with responsibility for determining premiums on MediGap products (Tr. 41)
- Mr. Arruda said Ms. Pierce was the person with responsibility for measuring the performance of MediGap plans (Tr. 42-43).
- Mr. Arruda identified Ms. Pierce as the custodian of key actuarial documents. (Tr. 139).

Please advise us by Monday morning when BCBMA will make production of the missing documents and when it will offer Ms. Pierce for deposition.

Separately, as discussed at Mr. Mulrey's deposition yesterday, please provide a legible version of the document marked as Mulrey Exhibit 2 bearing Bates numbers BCBSMA-AWP 12594-12609.

Stephen Coco
October 7, 2006
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Please call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adeel A. Mangi', with a stylized, cursive script.

Adeel A. Mangi

cc: Ed Notargiacomo, Esq.
Counsel of Record